

CENTRAL INTELLIGENCE AGENCY
WASHINGTON, D.C. 20505

13 February 1973

MEMORANDUM FOR: Richard C. Tufaro
The White House

SUBJECT : Approval of Quarterly Reports

1. This is our response to your memorandum of 26 January requesting our comments on the proposed report forms and accompanying memorandum transmitted by your memorandum. We have no doubts that certain reports would be useful, but we believe the proposed reports should not be required in their present form. Further, reporting requirements should be determined by Committee discussion and consideration.

2. You advised that the forms and memoranda are to be transmitted, when finalized and approved, as attachments to an updated version of the Letter of Instructions forwarded with your memorandum of 28 December and we agree an instruction letter would be necessary. That letter requires such extensive revision that I believe it is not useful to comment on it in detail until it has been revised.

3. As to the substance of the reports to be required, I suggest that the primary standard against which the reports should be devised and established is that of usefulness within the scope of the Order and the NSC Directive, which includes usefulness in relation to cost. The ICRC should have a specific purpose in requiring each element of information in the report, not merely a general attitude that any information may be helpful sometime. I stress this point because some of the reports call for information which to my mind would serve no useful purpose. Further, we have not attempted to estimate the costs of preparing and submitting the reports, by this Agency or by all departments and agencies; it of course is true some cost is involved, and the more information the report calls for the greater the cost. In my later comments in this paper, I

discuss the usefulness of some of the information which the reports require, and point out some which seem to have no value. Obviously, others may not agree with my views, but it seems to me essential that the reports require only the information which the Committee determines would serve a useful purpose.

4. Report of Authorized Classifiers (no prescribed form)

a. The usefulness of this report would be to make available the statistics as to the number of persons authorized to classify; successive reports would show changes in this regard within each department and throughout the executive branch. This would permit ICRC to question a department's actions (as indeed has been done) and to issue press releases which show how well the government is doing in limiting the number of persons authorized to classify. The additional information required by the proposed report seems of little or no value. The departments have the quarterly list of classifiers from which the identity of a classifier of any document may be ascertained. Thus, there would appear to be no purpose in requiring both name and position title, or a "translation" of any abbreviation, or a statement of procedures for determining the identity of the classifier, etc. Note in this regard that the report is a quarterly document and any such "translations" and statements, in virtually all instances, would simply be repeated in successive quarterly reports.

b. With reference to Instruction 7 it appears erroneous under the Executive Order for the ICRC to prescribe that the report is unclassified. Classification, if any, depends on the information involved; under the Order it is the department's responsibility to make that determination. (This comment applies, with minor modification, to each report form, and I do not repeat it in my following comments on each form.)

c. Under the arrangement I made with Chairman Eisenhower when the ICRC got under way, CIA does not physically forward or hand to the Chairman our quarterly lists. However, we do accomplish the updating on a quarterly basis and we of course will continue to do so. Our lists are kept on file in CIA and are available there for any ICRC or CIA review. To meet the requirements concerning numbers of classifiers, we of course will submit the statistical information called for by the draft memorandum of 1-10-73.

5. Report of Classification Abuses (Form 322)

a. The report goes beyond the requirement of the Directive, which calls for reports only of "Departmental Committee actions" on classification abuses. Thus, much of the information called for by the report is inappropriate and in many cases would be premature.

b. In any event, no purpose would be served in furnishing ICRC with the names of employees who commit classification abuses, the dates of commission, the organizational units, locations, statements of corrective measures, etc., as required by the proposed form and memorandum. It might be of value to know the numbers of abuses in a given department, or that one individual committed a certain number in a certain quarter or other period of time. This would tell the Committee that a department or individual may be weak or at fault or is failing to make corrections. But ICRC is in no position to know and understand a department's or individual's circumstances, duties, pressures, etc., and consequently cannot decree how corrections should be made. The production of the statistics on abuses itself puts pressure on the departments to correct and ICRC can add to the pressure in various ways, including reports to the NSC or to the President, but the details required by the draft report do not properly add to the Committee's weapons. Moreover, it seems unfair and irresponsible of department heads to report the failures or mistakes of their employees (by name) to another body. It is the responsibility of the department head to manage his organization, correct its errors and discipline its personnel; the Directive itself requires the department head to discipline his employees. A report which reveals the extent to which he is performing this responsibility may have some usefulness; a report which puts the finger on named subordinates is neither useful nor fair.

c. Almost certainly some of this information required of CIA (or others) by the form would be classified, which emphasizes the undesirability of furnishing information having no use.

d. Form 322 is unnecessary, since it merely calls for information, in narrative form, with no blanks to be filled in. Alternatively, the accompanying memorandum of 1-10-73 is unnecessary, since virtually the same instructions appear in the form itself; those instructions not appearing on the form could be added and the memorandum abandoned.

6. Report of Unauthorized Disclosures (Form 323)

a. The thrust of our comments in paragraphs 4 and 5 above applies to this report, that is, there are details of information which can be of no value to ICRC and the report is not limited to "Departmental Committee actions", as it should be under the Directive. But there are several other serious objections. The information sought seems to suggest that ICRC is in a position to do something about the unauthorized disclosure that the department cannot do. Manifestly, the reverse is true. The department has the information, the facilities, the manpower, etc., to analyze the situation, to launch investigations, to take actions to narrow the range of suspects, etc., virtually none of which can be done by ICRC. As with Form 322 and our comments in paragraph 5, it is unfair to expose to another body a department's employee whose error or wrongdoing and discipline is within the responsibility and authority of the department head. The requirement to name the "probable defendants" is particularly objectionable. Whatever may be the thought behind the requirement to indicate the "probable jurisdiction", at the very least it seems likely to intrude on the responsibilities of the Department of Justice and the U. S. Attorney. The requirement for the department's analysis of the impact on "national security" not only is a matter beyond the capacity of ICRC to be useful and is not required by the Order or the Directive, but might indeed be harmful. Heads of departments which have national security responsibilities are aware of the importance of security leaks and they know which ones to bring to the attention of higher level officials.

b. Paragraph 3, prescribing the unauthorized disclosures which are to be reported, is far from clear and may suffer from having been pieced together from too many sources. What is gained by the use of the word "compromise" in the first sentence and what is a compromise? That sentence perhaps should read:

An unauthorized disclosure is defined as a communication or physical transfer of classified information to an unauthorized person.

Sentence 3 appears to mean that it is the newspaper, rather than the source of the leak, which commits the offense. That sentence also

defines an "unauthorized disclosure" by including that same term in the defining language. The last sentence seems to have elements of the chicken and the egg question in it. Perhaps the entire paragraph should be limited to the suggested sentence above, plus:

Unauthorized disclosures are to be included in the report to the ICRC only if the department concludes (1) there is reason to believe that an unauthorized disclosure occurred which is of sufficient importance to warrant investigation, and (2) the investigation confirms that an important disclosure did occur.

7. Report of Mandatory Declassification Review Requests
(Form 321)

a. The draft memorandum of 1-22-73 accompanying Form 321 includes a number of instructions to departments on how to handle and process requests for declassification reviews. As such, it repeats the substance of certain provisions of the NSC Directive and departmental regulations. There are bound to be some differences between the form and the regulations, which would cause confusion. Moreover, personnel who prepare the reports quite likely are not the personnel who process requests. Those provisions should be deleted altogether (with appropriate modifications of remaining provisions), as follows:

- (1) paragraph 1, sentences 3 and 4;
- (2) paragraph 8C, all but the last sentence;
- (3) paragraph 8D, sentences 3 and 4;
- (4) paragraph 8E(1), sentences 1 and 3;
- (5) paragraph 8E(3), last sentence.

b. Additionally, the report, which is complicated and will involve a great deal of work, goes beyond the scope of the requirement of the Directive. The Directive calls for reports only of "Departmental Committee actions" on declassification requests. Thus, all

columns between the column headed "Requests" and that headed "Appeal to Departmental Committee" should be deleted.

8. Quarterly Summary Report (Form 324)

a. This form essentially is two reports. Heading 4 concerns the data index system; the NSC Directive does authorize progress reports on the data index systems, but this report goes beyond the requirement of the Directive (see subparagraph b. below). Further, the Directive requires only "progress" reports and ICRC thus may determine that a frequency other than quarterly is warranted. (In my view, only a less frequent schedule would be preferable.) Heading 5 is not required by the Directive, but is authorized by it.

b. Heading 4, and the accompanying instructions, require, quarterly, a report of the number of documents classified in each classification category, the number of each category placed in the Advance Declassification Schedule, the number in the General Declassification Schedule and the number of each which are exempt. The accompanying instructions, at paragraph 8, state that the requirements are based on the assumptions that all departments maintain accountability records on all Top Secret documents and have begun to index selected categories of classified documents in data index systems. The assumptions are correct as to CIA (except that Top Secret documents in certain compartmental systems are not so recorded). The instruction also permits sampling techniques in lieu of actual count of Secret and Confidential documents, because of their heavy volume. Since the Directive calls for reports on "information accumulated in the data index system", to the extent that this report calls for reports of documents not in the systems, it goes beyond that authority and should be modified accordingly. We can supply the information for heading 4 insofar as it refers to the documents in our data index system. But we produce millions of classified documents per quarter which are not Top Secret and are not in the data index system. (We are commenting separately on Chairman Eisenhower's letter of instructions on the data index system, transmitted 23 January 1973.) If we were to attempt to produce estimates of those documents quarterly and within 30 days, our estimates would be very, very rough and of little value. Such estimates would be based on information from our installations all over the world, changes in our needs for safes and storage requirements and changes in the requirements on us to produce intelligence. Larger departments likely would have even more difficulties.

c. The indication in paragraph 3, page 1, of the memorandum that the Committee "will consider" departmental requests for exclusions, unnecessarily invites a great deal of work for the Committee. We suggest the exclusions contemplated in that paragraph are patently reasonable and should be prescribed by the memorandum, rather than left to ICRC consideration on a case-by-case basis.

d. Heading 5 in Form 324 is not required by the Executive Order or the NSC Directive. Thus, it need not be required at all and in any event need not be required quarterly. It is my suggestion that the requirement of heading 5, in its present form, is inappropriate generally and, in certain particulars, is undesirable as to CIA, and perhaps others. The report seems to suggest that agencies will modify their training programs and launch other actions to permit new reporting each quarter. Further, the requirement that these kinds of activities be reported quarterly will almost force pro forma and sterile reports. In view of the nature and purpose of CIA and the CIA mission, there are certain difficulties with the concept of publicizing the downgrading or declassifying of information. It is my suggestion that heading 5 be deleted from Form 324 and oral reports in these areas be made by Committee members from time to time.

9. Federal Register Publication

I believe publication of these forms and instructions in the Federal Register is undesirable; certainly publication is not required by the Order or Directive. First of all, the forms and requirements are new and undoubtedly will require modification as experience dictates. Further, publication could, and likely would, result in requests for copies of reports submitted by departments. Quite aside from classification and security problems, if the reports are made available to requesters the departments would be providing piecemeal information to persons who do not have the full picture, with resulting criticism and problems. In particular, it would be inexcusable to furnish to a private requester the names of employees who commit declassification abuses or unauthorized disclosures, and all the more so if possible crime is involved.

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LAWRENCE R. HOUSTON
General Counsel

cc: SA/ExDir-Compt/IC